HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 289 of 2002 (SS)
(Old NO.19338 of 1990)

Kewal Singh s/o Sri Kishore Singh
Conductor r/o Gamga Dutt Joshi Marg.
Kotdwar, District Pauri Garhwal ..... Petitioner

Versus

1. Up Pradhan Prabandhak, Western Zone, U.P.S.R.T.C. Meerut.
2. Regional Manager U.P.S.R.T.C. Dehradun
3. Assistant Regional Manager, U.P.S.R.T.C. Haridwar .....Respondents

Sri K.N. Joshi, Advocate for the petitioner
Sri A.N. Sharma, Advocate for the respondents.

Dated: May 5, 2006

Hon'ble Rajesh Tandon, J.

Heard Sri K.N. Joshi, counsel for the petitioner and Sri A.N. Sharma counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order of termination dated 12.10.1989 passed by the Regional Manager, U.P.S.R.T.C. Dehradun and order dated 21.5.1990 passed by the Up Pradhan Prabandhak.

Briefly stated the petitioner was appointed on the post of conductor on 21.4.1965 and was confirmed on 8.10.1979. disciplinary proceeding were initiated against the petitioner and charge sheet was issued to him by the regional Manager,

U.P.S.R.T.C. Dehradun. The first charge against the petitioner was that on 3.3.1988 while he was on duty in Bus No. 8856 the Traffic Inspector found that there were 28 persons travelling in the bus while only 13 persons were issued valid ticket. The second charge against the petitioner was that on 10.2.1988 while he was on his duty in Bus No. 1344 the Traffic Inspector at the time of checking found that 14 passengers were travelling without ticket. The petitioner submitted his written statement to the Inquiry Officer and denied both the charges. As regard to charge no. 11, he had submitted that on 3.3.1986 while the bus was going to Amola from Kotdwar a truck was standing on the road due to some mechanical defect. The bus was stopped there as some of the passengers wanted to drink water. As soon as the bus stopped there, 13 persons who were travelling by the truck boarded on the bus. The petitioner could not prepare the ticket of the passenger immediately. Soon thereafter, the Traffic Inspector checked the bus. Second charge was also denied by the petitioner and it was asserted that no passenger without ticket was travelling in the bus while the bus was going to Lansdown from Kotdwar. The inquiry officer after completing the inquiry submitted his report to the Regional Manager, U.P.S.R.T.C. Dehradun and exonerated the petitioner from both the charges levelled against him. Thereafter the Regional Manager, U.P.S.R.T.C. Dehradun on 9th June 1989 issued a show cause notice to the petitioner calling upon him to submit his reply within 15 days. The petitioner submitted reply but the Regional Manager terminated the service of the petitioner vide order dated 12.10.1989.

Feeling aggrieved the petitioner filed appeal before the Deputy Chief Manager, Western Zone, Meerut who also rejected the same vide order dated 21.5.1990.

Counter affidavit has been filed on behalf of the respondents and denied the allegations made in the writ petition. It has been alleged in the counter affidavit that on the basis of the evidence led in the departmental inquiry both the charges are proved against the petitioner and the testimony of the Checking Authorities itself is sufficient and as such it was not necessary to examine any other witness.

A perusal of the inquiry report goes to show that the first charge has not been fully established against the petitioner. The Enquiry Officer has given findings that although there were 14 passengers to whom tickets were not issued by the Conductor however, he had not realized the amount of ticket from them as they were boarded on the bus just before the raid was conducted by the Traffic Inspector. The concluding paragraph of the first charge reads as under:

स्थिति चाहे कुछ भी परिचालक ने बिना टिकट यात्रियों से किराया लिया हो अथवा न लिया हो, किन्तु सत्य है कि बस में निरीक्षण के समय 13 यात्री बिना टिकट पाये गये, जिनके टिकट निरीक्षणकर्ताओ ने बनाये व निरीक्षण टिप्पणी अंकित करने के उपरान्त उनकी प्रंविष्टि मार्ग पत्र पर की। यदि बस में बिना टिकट यात्री थे तो परिचालक ने क्यों लिखा कि निरीक्षण अधिकारियों द्वारा वसूल किराये की धनराशि प्राप्त की वह स्पष्ट लिखता कि बस में बिना टिकट यात्री नही है।

The findings of the Inquiry Officer on the second charge also goes to show that no case of misconduct and misappropriation was made out against the petitioner and the charge has not been proved against him. The findings of the Inquiry Officer on the second charge reads as under:

दूसरे प्रकरण में श्री यु0एस0 अवस्थी या0 अ0 की रिर्पोट है कि बस में 28 यात्री पाये गये किन्तु माग्र प्त्र पर 14 यात्री ही अंकित हैं। किन्तु प्रतिपरीक्षण के समय श्री काली चरण वा0नि0 ने बताया कि मार्ग प्त्र पर पूर्ण प्रविष्टि सही थी किन्तु यात्रियों के पास टिकट नही थे इस कारण इसके काट कर हस्ताक्षर किये गये है किन्तु मार्ग प्त्र का अवलोकन करने पर पाया कि उस पर निरीक्षण के समय 18 यात्रियों की प्रविष्टि पाई गई और कोई भ्पाी प्रविष्टि श्री काली चरण या0नि0 द्वारा ऐसी नही है जिसकों काट कर हस्ताक्षर किये गये हों। इस प्रकार श्री काली चरण या0नि0 का बयान विश्वसनीय नही है । हॉ इस प्रकरण में पाया गया कि निरीक्षण के समय तक परिचालक ने यात्रियों से किराया नही लिया था और निरीक्षण के समय ही परिचालक ने बताया था कि 14 यात्री थेडे पीछे से बैठे है जिनके टिकट वह बना रहा है। जैसा कि यातायात अधीक्षक की रिर्पोट से भी स्पष्ट है।

Thus the Inquiry Officer has reached to the conclusion that 14 passengers were found without ticket at the time of checking but Conductor had not realized the amount of ticket from them and he told the Traffic Inspector that the passengers were boarded on the bus just before the checking and he was preparing their tickets.

From the report of the Inquiry Officer it is clear that no charge of misappropriation of ticket money or fraud has been established against the petitioner but the Disciplinary Authority instead of dropping the proceedings against the petitioner issued show cause notice to him.

Although the Disciplinary Authority has power not to accept the findings arrived at by the Inquiry Officer but he has to give reasons as to why he is not agreeing with the findings arrived at by the Inquiry Officer. The notice issued to the petitioner, annexure-8 to the writ petition shows that it is a usual notice and the Disciplinary Authority has not applied his mind before issuing such a notice. In the

Inquiry report both the charges levelled against the petitioner were found not established against him but the contains of the notice go to show otherwise. The extract of the show cause notice reads as under:

आपके विरुद्ध लगाये गये आरोप पत्र सं0 3976/स्था.(अनु) 54 (बी) कोट 271/88 दिनांक 22.3.88 के अर्न्तगत लाये गये आरोप की जॉच सहायक क्षेत्रीय प्रबन्धक हरिद्वार (जॉच) अधिकारी द्वारा जॉच करने पर उन्होने आप पर लगाये गये आरोप सिद्ध पाये हैं। जॉच आख्या की प्रति संलग्न की जा रही हैं जॉच आख्या से सहमति व्यक्त करते हुये आपको निदे ा दिये जाते है कि अधोहस्ताक्षरी को कारण बतायें कि क्यो न आपको निलम्बन काल का अविशिष्ट वेतन अपहृत करते हुये सेवा से ृपथक कर दिया जाय

From the perusal of the inquiry report it is clear that the inquiry officer has not come to a definite conclusion that the petitioner has not issued tickets to the passengers and misappropriated the money paid by the passengers as fare. Thus the Disciplinary Authority was not justified to issue show cause notice to the petitioner mentioning therein that the charges levelled against the delinquent employee were fully established against him in the inquiry report.

The Disciplinary Authority may or may not agree with the findings arrived at by the Inquiry Officer but in case he is not fortified to agree with the Inquiry Officer he should given reasons in the show cause notice.

I have also gone through the order passed by the appellate authority in the appeal. The appellate authority decided the appeal in a cursory way by a cryptic order. It was incumbent upon the appellate authority to pass a reasoned order after examining the entire record and evidence adduced by the parties.

The counsel for the respondents has submitted that facts and evidence of the case cannot be examined in a writ

petition. The Apex court in the case- Kuldeep Singh Vs. The Commissioner of Police, 1998 Judgments Today 603 has held that where the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse, the High Court can interfere with the same. The relevant observations are reproduced below:

"It is no doubt true that the High Court under Article 226 or this Court under Article 32 would not interfere with the findings recorded at the departmental enquiry by the disciplinary authority or the Enquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the Appellate Authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the High Court as also to this Court under the Constitution takes in its stride, the domestic enquiry as well, and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictate of the superior authority".

The factual aspects of the case go to show that no case of misconduct or misappropriation of public money is made out against the petitioner and the writ petition deserves to be allowed.

In view of the above, a writ of certiorari is issued quashing the order-dated 21.5.1990 and 12.10.1989 passed by

respondents no. 1 and 2 respectively. The petitioner is reinstated in service with consequential benefits.

Accordingly, writ petition is allowed. No order as to costs.

Dated: May 5, 2006 **Rajesh Tandon, J.**